IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 628 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DEVENDRA SHAMJI CHHEDA & 1 - Appellant(s)
Versus
RANMAL GOVA HARIJAN (DEAD) & 5 - Defendant(s)

==========

Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
UNSERVED-EXPIRED (N) for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 5.
NOTICE UNSERVED for Defendant(s) : 6,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/09/2007

ORAL JUDGMENT

1. The appellants - Driver, owner and the Insurance Company of Truck No.GTY-5363 were before this Court

with a submission that the tribunal was unjustified in awarding a sum of Rs.90,000=00 under the head of loss of future income and further erred in applying multiplier of 25. This appeal was filed by the appellants being aggrieved by the Judgement and award dtd.12/11/1990 passed by the Motor Accident Claim Tribunal (Auxiliary), Kutch at Bhuj in Motor Accident Claim Petition No.182 of 1984. It appears that the appellant – driver namely Narayan Krishna was later on transposed as respondent No.6 and as he could not be served, the other appellants have submitted that his name be allowed to be deleted.

2. Mr.Mehta, learned counsel for the appellants submit that a joint appeal at the instance of the owner and the Insurance Company would not be maintainable and therefore the Insurance Company be allowed to be deleted.

3. The prayer is allowed. Office is hereby directed to delete the name of the respondent No.2 - New India Assurance Company Co. Ltd. from the original appeal memo within a period of 10 days.

4. Mr.Mehta, learned counsel for the appellant – Devendra Shamji Chheda submits that the respondent No.6 – driver of the vehicle could not be served and as he is not

a necessary party, his name may be allowed to be deleted. The prayer is accepted.

5. After taking me through the evidence, learned counsel for the appellant submitted that the tribunal was unjustified in awarding a sum of Rs.90,000=00 under the head of future loss of income. His submission is that the claimants were father and mother aged 55 and 50 years respectively, adult sister and adult brother aged 30 and 18 years respectively and a minor brother about 15 years of age. He submitted that in a case where compensation are to be allowed, not only the age of the deceased is to be seen but the age of the dependents is also required to be considered. He submitted that the adult sister and adult brother would not be entitled to anything and the minor brother after attaining majority would also not be entitled to anything. According to him, looking to the set of the facts, the tribunal should have applied multiplier of 8 only and nothing beyond that.

6. Taking into consideration that the claimants are 55 and 50 years and two out of three are aged 30 and 18 years, I am of the opinion that the tribunal could not have applied multiplier of 25. In the considered opinion of this Court, application of multiplier of 10 wold be reasonable.

The multiplier is accordingly reduced to 10 and it is held that the claimants would be entitled to a sum of Rs.36,000=00 only instead of Rs.90,000=00 as awarded by the tribunal.

7. It was then submitted that the tribunal was unjustified in awarding 12% interest and this Court should reduce the same from 12% to 6%.

8. Taking into consideration that the compensation is reduced to 40% only, I do not think that this Court should interfere on the question of rate of interest.

9. In so far as the award under the head of loss of company, obsequial ceremony and transport expenses are concerned, I do not think that any interference is called for.

10. The claimants would be entitled to a sum of Rs.45,000=00 only with 12% interest from the date of the claim petition till realisation. As the appeal of the appellant is allowed, this Court would be required to exercise its powers under Order 41 Rule 33 of the Code of Civil Procedure and must direct that the liability of the Insurance Company would also stand reduced from Rs.99,000=00 to Rs.45,000=00 only. If the Insurance Company has deposited the amount with tribunal and the

said amount has not been disbursed in favour of the claimants or has been kept in security or spent in some security or Fixed Deposit Receipts, then, the Insurance Company would be entitled to get back the amount on making an application to the tribunal. If the Insurance Company has made the payment of any amount in excess of its liability as found by this Court, then, in view of the reduced liability of the appellant - owner of the vehicle, the Insurance Company may recover the said amount from the claimant.

11. The appeal to the extent indicated above is allowed. No costs.

(R.S. GARG, J.)

rafik